

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 721 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GANDHI CHAMPAKLAL

Versus

HEIRS OF KANTILAL T SHAH

Appearance:

MR SURESH M SHAH for Petitioner

MR UM PANCHAL for MR. D.D.Vyas for Respondent

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/06/2000

ORAL JUDGEMENT

Heard Shri S.M.Shah, learned advocate for revision petitioner and Mr. U.M.Panchal, the learned advocate for Mr. D.D.Vyas, the learned advocate for and on behalf of revision opponent.

2. After hearing this matter at length, at the fag-end of the arguments, learned advocates of both the parties have restricted their arguments only on Point Nos. 3 and 4 which are raised by the learned Appellate Judge. They are as follows :-

Point No.3 Whether the plaintiff proves that defendants have sublet the Medi portion of the suit premises for 3-4 years ?

Point No.3 Whether the suit of the plaintiff is barred by principles of waiver ?

3. The learned advocates submit a joint Purshis requesting this court to set aside the finding given by the appellate court on Point Nos. 3 and 4, as the learned Judge of the Appellate Court has not considered and appreciated evidence of witness Shivilal Ujamshibhai at Ex.54 in its true and correct perspective because the learned Appellate Judge has discussed some part of evidence in his judgment on Page 15 but after considering the evidence, he has not come to a definite conclusion as to why Shivilal Ujamshibhai is not believed. There is evidence of Shivilal Ujamshibhai at Ex.54 that he had taken first floor of the suit premises on rent from Talakshibhai and he was paying rent at the rate of Rs.2/per month. Inspite of this evidence, learned Appellate Judge has observed in Para 18 of his judgment that there is no evidence on record to show that the suit property or part thereof was sublet to H.S.Brothers for consideration. This evidence of Shivilal Ujamshibhai is not appreciated in true and correct perspective.

4. Learned advocates of both the parties jointly submitted that because of this situation, they are submitting this Purshis requesting this court to remand the matter to the Appellate Court with a direction to hear the arguments of both the parties on the aforesaid Point No.3 and 4 and give his findings afresh on Point Nos. 3 and 4 as raised by the Appellate Judge in accordance with law.

5. This court is very much conscious of the fact that in this revision matter, this court cannot exercise its powers under Order 41 Rule 23 Civil Procedure Code but when both the parties jointly request this court to refer Point Nos. 3 and 4 in Regular Civil Appeal No. 123 of 1983 to the Appellate Court with a direction to decide Point Nos. 3 and 4 afresh after affording full opportunity of hearing to both the parties, this court deems fit and necessary for a just decision, to remand

the matter to Appellate Court as a Special Case. It is made clear that this civil revision application is decided only on peculiar facts and circumstances of the case and the decision will not be treated as a precedent.

6. For the foregoing discussions and at the joint request made by both the learned advocates of the parties, the findings on Point Nos. 3 and 4 arrived at by the learned Appellate Judge in Regular Civil Appeal No. 123 of 1993 which was pending on the File of District Court, Bhavnagar are hereby set aside and the learned Appellate Court is directed to rehear both the parties on Point Nos. 3 and 4 afresh and give its final decision in the appeal keeping in mind the other points already decided by the then learned Appellate Judge and also keeping in mind the findings which he will give on Point Nos. 3 and 4 pursuant to this order.

7. As requested by both the parties in joint Purshis, matter is remanded back to the learned Appellate Judge for fresh decision on Point Nos. 3 and 4 as aforesaid in the matter, and give its final decision in the appeal keeping in mind the other points already decided by the then learned Appellate Judge and also keeping in mind the findings which he will give on Point Nos. 3 and 4 pursuant to this order.

8. With the above directions and observations, this Civil Revision Application stands disposed of accordingly. Rule is made absolute to the above extent. There shall be no order as to costs. Joint Purshis and copy of deposition Ex.54 of Shivilal Ujamshibhai tendered to day, are taken on record.

Date:19/6/2000. (H.H.MEHTA, J.)

ccshah